IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION No. 5:08-CR-164-D

UNITED STATES OF AMERICA)	
v.)	ORDER
DEWAYNE CORNELIUS MELVIN,)	
Defendant.)	

On October 6, 2008, pursuant to a written plea agreement, Dewayne Cornelius Melvin ("Melvin") pleaded guilty to distribution of 50 grams or more of cocaine base (crack). See [D.E. 1, 23]. On April 21, 2009, the court held Melvin's sentencing hearing. See [DE. 38, 39]. At the hearing, the court adopted the facts set forth in the Presentence Investigation Report ("PSR"). See Fed. R. Crim. P. 32(i)(3)(A)-(B). The court calculated Melvin's total offense level to be 34 his criminal history category to be VI, and his advisory guideline range to be 262 to 327 months' imprisonment. See [D.E. 39]. The court thoroughly considered all relevant factors under 18 U.S.C. § 3553(a) and sentenced Melvin to 327 months' imprisonment. See id.

On May 14, 2015, Melvin moved for a sentence reduction under 18 U.S.C. § 3582(c)(2), U.S.S.G. § 1B1.10, and Amendment 782 to the Sentencing Guidelines. See [D.E. 53].

Melvin is a career offender and is not eligible for a sentence reduction under 18 U.S.C. § 3582(c)(2), U.S.S.G. § 1B1.10, and Amendment 782. See, e.g.; PSR ¶¶ 16, 18, 20; United States v. Woods, 675 F. App'x 347 (4th Cir. 2017) (per curiam) (unpublished); United States v. Avent, 633 F. App'x 176 (4th Cir. 2016) (per curiam) (unpublished). Thus, the motion is denied.

Alternatively, even if the court has discretion to reduce Melvin's sentence, the court would decline to do so. See, e.g., Dillon v. United States, 560 U.S. 817, 827 (2010); United States v.

Peters, 843 F.3d 572, 574 (4th Cir. 2016); United States v. Patterson, 671 F. App'x 105, 105–06 (4th Cir. 2016) (per curiam) (unpublished); United States v. Cole, 618 F. App'x 178, 178-79 (4th Cir. 2015) (per curiam) (unpublished); United States v. Thomas, 546 F. App'x 225, 225-26 (4th Cir. 2013) (per curiam) (unpublished); United States v. Perez, 536 F. App'x 321, 321 (4th Cir. 2013) (per curiam) (unpublished); United States v. Smalls, 720 F.3d 193, 195-97 (4th Cir. 2013); United States v. Mann, 709 F.3d 301, 306-07 (4th Cir. 2013); United States v. Stewart, 595 F.3d 197, 200 (4th Cir. 2010). In deciding whether to reduce Melvin's sentence, the court finds that Melvin engaged in serious criminal behavior. See PSR ¶¶ 6-9. Moreover, Melvin is a violent recidivist, with convictions for possession of cocaine, possession with intent to manufacture, sell, and deliver marijuana (2 counts), maintaining a vehicle for keeping controlled substances, possession of a weapon on school grounds, resisting and obstructing a police officer, possession with the intent to manufacture, sell, and deliver heroin, possession with the intent to manufacture, sell, and deliver cocaine, malicious wounding with a firearm (3 counts) and wanton endangerment, conspiracy to possess with the intent to distribute and to distribute cocaine base (crack), cocaine powder, heroin, and marijuana, and using or carrying of a firearm during and in relation to a drug-trafficking crime and aiding and abetting. See id. ¶¶ 14-20. Melvin also has performed poorly on supervision and has a spotty work history. See id. ¶¶ 14–16, 20, 33–35.

Having reviewed the entire record and all relevant policy statements, the court finds that Melvin received the sentence that was "sufficient, but not greater than necessary" under 18 U.S.C. § 3553(a). Further reducing Melvin's sentence would threaten public safety in light of his serious criminal conduct and criminal history. Cf. U.S.S.G. § 1B1.10, cmt. n.1(B)(ii). Thus, the court denies Melvin's motion for reduction of sentence under Amendment 782. See, e.g., Patterson, 671 F. App'x at 105–06; Cole, 618 F. App'x at 178–79; Thomas, 546 F. App'x at 225–26; Perez, 536

F. App'x at 321.

In sum, the court DENIES Melvin's motion for reduction of sentence [D.E. 53].

SO ORDERED. This <u>18</u> day of September 2017.

JAMES C. DEVER III

Chief United States District Judge